

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
NORTHEAST UTILITIES SERVICE)	FCC File Nos. 0002927461, 0002927602,
COMPANY)	0002927618, 0002927882
)	
Request for Waiver of the Commission's Rules to)	
Operate on Public Safety Pool Frequencies in the)	
220-222 MHz Band)	

ORDER

Adopted: October 18, 2007

Released: October 19, 2007

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* On February 27, 2007, Northeast Utilities Service Company (NUSCO) filed the above-captioned applications, and accompanying request for waiver, for authorization to operate at twenty-three locations in Connecticut on Public Safety Pool frequencies in the 220-222 MHz (220 MHz) band.¹ NUSCO seeks a waiver of the public safety eligibility requirements contained in Sections 90.20(a), 90.719(c), and 90.720 of the Commission's Rules,² and of Section 90.733(d), which prohibits aggregating these frequencies.³ For the reasons stated herein, we deny NUSCO's waiver request, and will dismiss the applications.

2. *Background.* NUSCO holds the Commission licenses for the Northeast Utilities operating companies, which furnish electric service to approximately 1.9 million customers in Connecticut, New Hampshire, and Massachusetts, and natural gas to approximately 196,000 customers in Connecticut.⁴ It is licensed for approximately two hundred Part 90 Industrial/Business Pool private land mobile radio (PLMR) stations, primarily in the 30-50 MHz, 150-174 MHz, 450-470 MHz, and 900 MHz bands. NUSCO also, by waiver, is authorized for PLMR operations on 217/219 MHz Automated Maritime Telecommunications System (AMTS) spectrum in New Hampshire and parts of Massachusetts and Connecticut.⁵

3. NUSCO has concluded, however, that additional spectrum is needed in order to ensure the safe, reliable, and efficient distribution of electricity and natural gas to its customers, particularly during

¹ See FCC File Nos. 0002927461, 0002927602, 0002927618, and 0002927882 (filed Feb. 27, 2007); Request for Rule Waiver (filed Feb. 27, 2007; amended Apr. 9, 2007) (Waiver Request). Specifically, Channels 161-170 and 181-185. See 47 C.F.R. § 90.715(a).

² 47 C.F.R. §§ 90.20(a) (defining eligibility for Public Safety Pool), 90.719(c) (designating Channels 181-185 for non-nationwide, emergency medical use), 90.720 (designating Channels 161-170 for public safety/mutual aid use). Although NUSCO did not specifically request a waiver of Section 90.720, we note that NUSCO's proposed operations would require such a waiver. Therefore, we shall treat NUSCO's request as seeking a waiver of Sections 90.20(a), 90.719(c), and 90.720.

³ 47 C.F.R. § 90.733(d).

⁴ See Waiver Request at 1.

⁵ See AMTS Consortium, LLC, *Order*, 20 FCC Rcd 17975 (WTB PSCID 2005), *aff'd*, *Order on Reconsideration*, 22 FCC Rcd 1597 (WTB MD 2007), *review pending*.

service outages and disaster situations.⁶ Consequently, it now seeks authorization to operate on 220 MHz band channels that are designated for public safety use. It states that using 220 MHz spectrum to expand its communications capabilities would allow it to avoid costly, duplicative, and unduly burdensome capital outlays, because it already operates in the adjacent AMTS band.⁷ NUSCO also contends that adequate compatible spectrum is not available by assignment from the Commission or through the secondary market.⁸ Because NUSCO is not eligible to hold authorizations in the Public Safety Pool, it seeks a waiver of the rules designating the requested frequencies for public safety use. In addition, so that the requested frequencies will be interoperable with its AMTS spectrum, NUSCO intends to operate on 12.5 kilohertz channels, and therefore requests a waiver of the prohibition on combining the frequencies at issue into channels wider than five kilohertz.

4. *Discussion.* Under Section 1.925(b)(3) of the Commission's Rules, a request for a rule waiver in the Wireless Telecommunications Services may be granted if it is shown that "[t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest," or that, "[i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative."⁹ As set forth below, we conclude that grant of the requested waiver is not warranted.

5. As NUSCO notes, the Wireless Telecommunications Bureau (Bureau) and Public Safety and Homeland Security Bureau have found that the public interest was served by granting waivers to permit electric utilities to operate on public safety channels.¹⁰ NUSCO's reliance on those cases, however, is inapposite, as they generally involve requests to permit utilities to share public safety spectrum (and sometimes in turn to share their Industrial/Business Pool spectrum with public safety entities) in order to facilitate interoperability, especially during emergencies.¹¹ NUSCO does not propose to utilize the public safety frequencies at issue to facilitate interoperability.¹² In addition, those waiver requests had the support of local public safety entities, but NUSCO does not even suggest that Connecticut public safety authorities support its request for waiver to operate on public safety spectrum. Moreover, those decisions were consistent with the Commission's admonition that "any proposal whereby a non-public safety eligible would use public safety spectrum must be subject to close scrutiny to ensure that the arrangement does not result in a net loss of public safety spectrum,"¹³ while NUSCO's proposal clearly would reduce

⁶ See Waiver Request at 1, 3.

⁷ *Id.* at 3.

⁸ *Id.*

⁹ 47 C.F.R. § 1.925(b)(3).

¹⁰ See Waiver Request at 2 (citing Douglas Electric Cooperative, *Order*, 21 FCC Rcd 11298 (PSHSB PD 2006); Ameren Services Company, *Order*, 21 FCC Rcd 6329 (WTB PSCID 2006) (*Ameren*); Entergy Nuclear Indian Point 2, LLC, *Order*, 19 FCC Rcd 21256 (WTB PSCID 2004) (*Entergy*); Dominion Virginia Power, *Order*, 19 FCC Rcd 12254 (WTB PSCID 2004); American Electric Power Service Corporation, *Order*, 15 FCC 15553 (WTB PSPWD 2000); Commonwealth of Pennsylvania and GPU Energy, *Order*, 13 FCC Rcd 8787 (WTB PSPWD 1999)); see also, e.g., State of South Carolina and SCANA Communications, Inc., *Order*, 13 FCC Rcd 8787 (WTB 1997).

¹¹ Neither the Bureau's decision in *Ameren* nor its finding in *Entergy* involved such an arrangement, and neither decision supports NUSCO's request. *Ameren* involved unique circumstances pertaining to the 800 MHz band reconfiguration process. See *Ameren*, 21 FCC Rcd at 6330 ¶ 5. In *Entergy*, the applicant demonstrated that, through low-power operations and significant terrain shielding, its use of two frequency pairs would not impact public safety operations. See *Entergy*, 19 FCC Rcd at 21258 ¶ 7. Neither case pertains to the circumstances presented herein.

¹² See Waiver Request at 4.

¹³ 1998 Biennial Regulatory Review -- 47 C.F.R. Part 90 -- Private Land Mobile Radio Services, *Memorandum Opinion and Order and Second Report and Order*, WT Docket No. 98-182, 15 FCC Rcd 16673, 16683 ¶ 20 (2000).

the spectrum available for assignment to public safety eligibles. Therefore, we conclude that grant of NUSCO's request would not serve the public interest.

6. Additionally, we are unpersuaded by NUSCO's contention that it has no reasonable alternative. NUSCO submitted a letter from the United Telecom Council (UTC), an FCC-certified frequency coordinator, concluding that no alternative spectrum is available, but we note that UTC did not review every PLMR spectrum band.¹⁴ NUSCO also has not shown that it exhausted all other options, such as spectrum leases¹⁵ or partitioning and disaggregation.¹⁶ Nor does NUSCO explain why shared spectrum (which it currently utilizes in many locations) does not merit consideration, or whether it has examined narrowbanding its existing frequencies below 512 MHz¹⁷ to create additional capacity.¹⁸

7. *Conclusion and Ordering Clauses.* We conclude that NUSCO has not made the requisite showing that a waiver is warranted under the circumstances presented. Because NUSCO has satisfied neither prong of the waiver standard, we deny its waiver request.

8. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the Request for Rule Waiver filed by Northeast Utilities Service Company on February 27, 2007, IS DENIED, and that its applications FCC File Nos. 0002927461, 0002927602, 0002927618, and 0002927882 SHALL BE DISMISSED.

¹⁴ See Letter dated Dec. 27, 2007 from Klaus Bender, UTC Spectrum Services, to Wayne Black, Esq., Keller and Heckman, LLP, Counsel for NUSCO. In its evaluation of alternative spectrum, UTC excluded the 30-50 MHz band because it is incompatible with NUSCO's proposed use, the 800 MHz band because of the ongoing reconfiguration process, and the 900 MHz band because of the current licensing freeze. UTC also concluded that no 150-174 MHz or 450-470 MHz band channels were available, because NUSCO needs relatively exclusive access for its proposed data applications, and no channel in those bands is unassigned within twenty miles of NUSCO's proposed locations.

¹⁵ See Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking*, WT Docket No. 00-230, 19 FCC Rcd 17503 (2004).

¹⁶ See, e.g., 47 C.F.R. § 90.1019.

¹⁷ See, e.g., Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Third Report and Order*, WT Docket No. 99-87, 22 FCC Rcd 6083 (2007).

¹⁸ Given our denial of NUSCO's request for waiver of Sections 90.20(a), 90.719(c), and 90.720(b), we will only briefly address its request for waiver of Section 90.733(d), which prohibits combining the frequencies at issue to form channels wider than five kilohertz. NUSCO seeks to distinguish a recent decision denying a similar request, County of Morgan, West Virginia, *Order*, 21 FCC Rcd 5161, 5163 ¶ 8 (WTB PSCID 2006) (*Morgan County*), on two grounds, neither of which we find persuasive. See Waiver Request at 4. First, NUSCO argues that the present request is distinguishable because it does not propose to use the channels for interoperability purposes, so, unlike Morgan County's proposal, a waiver would not undermine the interoperability of the channels. As noted above, we are disinclined to grant a waiver to permit use of public safety spectrum by non-public safety entities where the proposed operations will not facilitate interoperability. Second, NUSCO asserts that unlike *Morgan County* where the Bureau found that the applicant did not demonstrate a lack of reasonable alternatives, it has established that there are no reasonable alternatives to its proposal. As noted above, we do not agree that NUSCO has demonstrated a lack of reasonable alternatives. Finally, with respect to NUSCO's argument that the channels should not lie fallow because of the five kilohertz channel bandwidth limitation, we note that a rulemaking petition seeking to eliminate the limitation was filed recently. See DuPage Public Safety Communications Petition for Rulemaking (filed June 25, 2007). It would be inappropriate to grant a waiver of the rule to a non-public safety entity while this proposal is pending.

9. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.333.

FEDERAL COMMUNICATIONS COMMISSION

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